

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 151 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAMANBHAI D PATELAppellant

Versus

Gujarat Electricity BoardRespondent

Appearance:

1. Second Appeal No. 151 of 1982
MR RA MISHRA for Petitioner
MR MD PANDYA for Respondent No. 1
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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 22/12/2000

ORAL JUDGEMENT

1. Being aggrieved by the judgement and decree dtd.
16th July, 1980, passed by the then learned Assistant
Judge at Bharuch in Regular Civil Appeal No.6 of 1980,
dismissing the appeal with cost and confirming the
judgement and decree dtd. 18th October, 1979, passed by

the then learned 2nd Joint Civil Judge (J.D.) at Bharuch in Regular Civil Suit No.602 of 1977, directing the present appellant to pay Rs.2295/- to the respondent together with cost and interest, the original defendant has preferred this appeal calling in question the legality and validity of the decree passed.

2. Necessary facts leading the present appellant to prefer the present appeal may in brief be stated. The appellant is having the agricultural land and for the purpose of irrigating field, he wanted to fetch water from a well in his field which was easier and convenient if electric motor was installed and with the aid of the motor, water was fetched from the well. He, therefore, installed the electric motor and applied for electric connection. The respondent Board accepted his application and gave electric connection. The Board was ready to supply electric connection but the appellant was not in a position to consume the energy because of his helpless position. According to him the well in his field had gone dry and as there was no water, it was of no use to take the energy and consume the same. The respondent then brought his helplessness to the notice of the Board. The respondent Board demanded minimum charges as it had already fulfilled its part of contract under which the liability of the appellant to pay the minimum charges arose. The appellant avoided to make the payment thinking that when he had consume no electric energy, he was not liable to pay and the contract, entered into was frustrated. The respondent Board then found that when it had invested a lot for the purpose of laying electric line upto the well of the respondents and when there was a term in the contract that the consumer would pay minimum charges regardless of the use of the energy, the appellant was bound to pay minimum charges. As the minimum charges were not paid despite the notice, the Board was constrained to file the aforesaid suit which was obviously resisted by the appellant. The learned Civil Judge hearing the parties, passed the decree on 18th October, 1979. Being aggrieved by the judgement and decree, the appellant preferred the appeal being Regular Civil Appeal No.6 of 1980 in the District Court at Bharuch, which was assigned to the then learned Assistant Judge, Bharuch for hearing and disposal in accordance with law. The then learned Assistant Judge, Bharuch, after hearing the parties dismissed the appeal and confirmed the judgement and decree passed by the trial court. Being aggrieved by the said judgement and decree, the appellant who is original defendant has preferred this appeal challenging the legality and validity thereof.

3. The learned advocate representing the appellant submits that no doubt the contract qua electric connection and supply of energy was entered into but the same was frustrated because the appellant was not in a position to consume the electric energy, run the motor and draw the water from the well, as there was no water in the well. When the appellant was thus helpless, the contract was then frustrated. It was, hence, unjust on the part of the respondent to claim the minimum charges.

4. The learned advocate representing the respondent submits that regardless of the consumption of the energy, for whatever might be the reason when once the contract is entered into, for the payment of minimum charges, the appellant cannot escape of his contractual obligation. He has to esteem the contract and pay.

5. In this appeal, therefore, the only question that arises for determination is whether in the facts and circumstances of the case, the contract entered into between the parties regarding the consumption of electric energy and payment of minimum charges is frustrated and whether the appellant - consumer is immuned from the liability to pay minimum charges ?

6. It may be stated that recently a similar question arose before the Supreme Court in the case of Bihar State Electricity Board and anr. vs. UMI Special Steel Ltd., 2000 AIR SCW 4035, wherein it is held that when the contract for supply of electric energy and payment of minimum charges is entered into between the consumer and the Board, the consumer has to pay minimum charges, during the subsistence of the contract even if no energy is consumed for whatever may be the reason. In view of such decision, the appellant has to esteem the contract. Whatever may be the cause for his not consuming the energy, he is bound to pay minimum charges when entering into the agreement, he has undertaken the liability to pay the same. He cannot escape of his contractual obligation on any ground or on the ground that the well went dry and it was not at all possible for him to consume the electric energy and fetch water. In short, the appellant has in law no case available to resist the claim and avoid to pay. In view of the law made clear by the Supreme Court, the appellant does not have a ground to stand upon. The decree passed by both the courts below, are therefore, in consonance with law and the same are required to be maintained.

6. For the aforesaid reasons, the appeal being

devoid of merits, is liable to be dismissed and is dismissed accordingly with no order as to costs.

(H.R. SHELAT, J.)

Rafik